



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,398	02/20/2001	Claudia Conti	88265-412	2052

28765 7590 03/15/2002

WINSTON & STRAWN
200 PARK AVENUE
NEW YORK, NY 10166-4193

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
----------	--------------

1761

15

DATE MAILED: 03/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-10

Office Action Summary

Application No.
09/785,398

Applicant(s)
Conti et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan. 2, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 10
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

Art Unit: 1761

1. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs et al in view of the book "The Wholefood Catalog" for the same reason set forth in paragraph 5 of the previous office action.

2. In the response filed Jan. 2, 2002, applicant argues standard sugar wafer such as that disclosed by Biggs permit only a limited time for processing, usually up to about 40 seconds. This argument is not supported by factual evidence. Applicant has not shown that the Biggs product only has a limited time for processing. Furthermore, applicant claims the wafer is sufficiently flexible for more than 40 seconds after baking. More than 40 seconds include 41,42,43 etc...; at this time frame after baking, the wafer is still warm and it is well known that while the wafer product is still warm, it is flexible. The product does not differ from the Biggs et al product as they teach reheating to achieve a plastic state. Reheating cause the wafer to be warm which will give it flexibility. Applicant further argues Biggs does not disclose or suggest replacing the flour with cereal grits or replacing the sucrose with reducing sugar to permit the wafer to remain flexible for further processing after baking. Biggs et al do not teach using cereal grits, but they certainly teach using reducing sugar. Example 1 shows that the composition contains both sucrose and invert sugar which is a reducing sugar. Thus, whatever property obtained by using reducing sugar, the Biggs et al product also possesses such property because they also use reducing sugar. As to the adding of cereal grits, it would have been obvious to do so to obtain different flavor and taste. Applicant argues the teaching of "small amount" in the cookbook teaches away from the upper end of the claimed ratio. The claimed ratio includes small amount;

Art Unit: 1761

in any event, the amount used can vary depending on the taste and flavor desired. The cookbook discloses grits are high in fiber and low in calories and fat; thus, it would have been obvious to use a large amount if a product high in fiber and low in calories and fat is desired. This would have been an obvious matter of choice. Applicant also argues the catalog does not teach replacing the wheat flour in sugar wafer with cereal grits in order to increase flexibility of the wafer after baking. It is not necessary to show that an ingredient is added for the same purpose as the claimed product. It is only necessary to show why it would have been obvious to one skilled in the art to add such ingredient. As to the flexibility, the Biggs et al product would have the same flexibility because it contains reducing sugar.

3. Applicant's arguments filed Jan. 2, 2002 have been fully considered but they are not persuasive.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

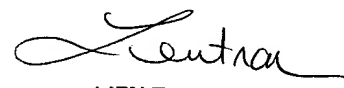
Art Unit: 1761

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

March 14, 2002


LIEN TRAN
PRIMARY EXAMINER
